

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REUBEN AVENT,

Plaintiff,

-against-

NYS ATT GEN. LETITIA JAMES, ET AL.,

Defendants.

19-CV-10923 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently incarcerated in the Otis Bantum Correctional Center and proceeding *pro se*, brings this action alleging that Defendants discriminated against him because of his race by delaying processing of his application for a charitable solicitation registration number for his proposed nonprofit agency.

By order dated February 6, 2020, the Court held that Plaintiff's complaint failed to state a claim on which relief could be granted and asserted claims against Defendants who are immune from suit but granted him leave to amend his complaint to cure its deficiencies. (ECF No. 9.) Plaintiff filed a notice of appeal from that non-final order. (ECF 12).¹ On March 10, 2010, the Court received Plaintiff's letter indicating that his address had changed and that he was seeking an extension of time to comply with all deadlines in this and his other pending actions. (ECF No. 14.)

¹ Because an improper interlocutory appeal from a non-final order is a nullity, it does not deprive the district court of jurisdiction. See, e.g., *United States v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996) (deeming a notice of appeal from a nonfinal order to be "premature" and a "nullity," and holding that the notice of appeal did not divest the district court of jurisdiction). If Plaintiff chooses not to amend his complaint, the Court will enter judgment, and Plaintiff can file an appeal.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Plaintiff's request for an extension of time (ECF No. 14) is granted. The Court directs Plaintiff to file his amended complaint within 14 days of the date of this order. If Plaintiff fails to comply within the time allowed, the complaint will be dismissed for failure to state a claim upon which relief may be granted and for asserting claims against Defendants who are immune from suit. 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. Cf. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: March 16, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge